

HOUSE No. 2530

By Mr. Fresolo of Worcester (by request), of John P. Fresolo and another that provision be made for binding arbitration for fire fighters and police officers. Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PROVIDING FOR BINDING ARBITRATION FOR FIRE FIGHTERS AND POLICE OFFICERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 If an employee organization duly recognized as representing the
2 firefighters or police officers of a city, town or district is engaged in
3 an impasse with said city, town or district which has continued for
4 thirty days after the publication of the fact-finders report pursuant to
5 Section nine of Chapter one hundred and fifty E of the General
6 Laws, or, if the parties have mutually waived the fact-finding provi-
7 sions contained in said Section nine of said Chapter one hundred and
8 fifty E, said employee organization shall petition the board to make
9 an investigation. If, after an investigation, the board determines
10 that:—

11 1.) the requirements of Section nine of said Chapter one hundred
12 and fifty E have been complied with in good faith by the employee
13 organization;

14 2.) thirty days have passed since the date of publication of the
15 fact-finding report pursuant to said Section nine;

16 3.) the proceedings for the prevention of any prohibited practices
17 have been exhausted, provided that any such complaints have been
18 filed with the commission prior to the date of the fact-finders report;
19 and

20 4.) an impasse exists, the board shall notify the employer and the
21 employee organization that the issues in dispute shall be resolved by
22 a three-member arbitration panel, or when the parties mutually agree,
23 the board shall select a single arbitrator in lieu of the arbitration
24 panel.

25 Said panel shall be comprised of three arbitrators, one selected by
26 the employee organization, and a third impartial arbitrator, who shall
27 act as chairman of the panel, who shall be selected by the two previ-
28 ously selected arbitrators. In the event that either party fails to select
29 an arbitrator or for any reason there is a delay in the naming of an
30 arbitrator, or if the arbitrators fail to select a third arbitrator within
31 the time prescribed by the board, the board shall appoint the arbri-
32 trator or arbitrators necessary to complete the panel, which shall act
33 with the same force and effect as if the panel had been selected
34 without intervention of the board.

35 In the event that the parties mutually elect to use a single arbri-
36 trator, selected by the board, the parties shall immediately request
37 the board to appoint said arbitrator, who shall act with the same
38 force and effect as if a three member panel had been selected by the
39 parties.

40 The single arbitrator or the arbitration panel acting through its
41 chairman, shall conduct a hearing within ten days after the date of
42 appointment of its chairman, at a place within the locality of the
43 municipality involved, where feasible. The chairman shall give at
44 least seven days notice in writing to each of the other arbitrators.
45 The chairman or single arbitrator shall give like notice to the repre-
46 sentative of the municipal employer and employee organizations of
47 the time and place of such hearing.

48 The single arbitrator or chairman shall preside over the hearing
49 and shall take testimony. Upon application and for good cause
50 shown, a person, labor organization, or governmental unit having
51 substantial interest therein may be granted leave to intervene by the
52 arbitration panel. The proceedings shall be informal. Any oral or
53 documentary evidence and other data deemed relevant by the arbri-
54 tration panel or single arbitrator may be received into evidence. The
55 arbitrators shall have the power to administer oaths and to require by
56 subpoena the attendance and testimony of witnesses, the production
57 of books, records, and other evidence relative to or pertinent to the
58 issues presented to them for determination. If any person refuses to
59 obey a subpoena, or refuses to be sworn or to testify, or if any wit-
60 ness, party, or attorney is guilty of any contempt while in attendance
61 at any hearing, the arbitration panel or single arbitrator may, or the
62 district attorney if requested, shall invoke the aid of the superior

63 court within the jurisdiction in which the hearing is being held,
64 which court shall issue an appropriate order.

65 A record of the proceedings shall be kept, and the chairman or
66 single arbitrator shall arrange for the necessary recording service.
67 Transcripts may be ordered at the expense of the party ordering
68 them, but the transcripts shall not be necessary for an award by the
69 panel or single arbitrator. The hearing may be continued at the dis-
70 cretion of the panel or single arbitrator and shall be concluded within
71 forty days from the time of commencement. At the conclusion of the
72 hearing, each party shall submit a written statement containing its
73 last and best offer for each of the issues in dispute to the panel or
74 single arbitrator, who shall take said statements under advisement.
75 Within ten days after the conclusion of the hearing, a majority of the
76 panel, or the single arbitrator, shall select as the last and best arbitra-
77 tion award either the employer's written statement of its last and best
78 offer, the employee organization's written statement of its last and
79 best offer, or the recommendations of the fact-finder, if a fact-
80 finding report and recommendations have been issued, and immedi-
81 ately shall give written notice of the selection to the parties. The
82 selection shall be final and binding upon the parties and upon the
83 appropriate legislative body. Within thirty calendar days of the last
84 and best offer selection and award, the impartial chairperson of the
85 arbitration panel or, the single arbitrator, shall issue a written opinion
86 inclusive of an analysis of all statutory factors applicable to the pro-
87 ceedings.

88 At any time before the rendering of an award, the chairman of the
89 arbitration panel or single arbitrator, if he is of the opinion that it
90 would be useful or beneficial to do so, may remand the dispute to
91 the parties for further collective bargaining for the period not to
92 exceed three weeks and notify the board of the remand. If the dis-
93 pute is remanded for further collective bargaining the time provi-
94 sions of this act shall be extended for a time period equal to that of
95 the remand.

96 In the event that the representatives of the parties mutually
97 resolve each of the issues in dispute and agree to be bound accord-
98 ingly, said representatives may, at any time prior to the final deci-
99 sions by the panel, or single arbitrator, request that the arbitration
100 proceedings be terminated, the panel, acting through its chairman or
101 single arbitrator, shall terminate the proceedings.

102 The factors among others, to be given weight by the arbitration
103 panel or single arbitrator in arriving at the decision shall include:—

104 (1) The financial ability of the municipality to meet costs. Such
105 factors which shall be taken into consideration shall include but not
106 be limited to:—

107 (a) the city, town, or district's state reimbursements and assess-
108 ments;

109 (b) the city, town, or district's long and short term bonded indebt-
110 edness;

111 (c) the city, town, or district's estimated share in the metropolitan
112 district commission deficit;

113 (d) the city, town, or district's estimated share in the Massachu-
114 sets Bay Transportation Authority's deficit; and

115 (e) consideration of the average per capita property tax burden,
116 average annual income of members of the community, the effect any
117 accord by the panel or single arbitrator might have on the respective
118 property tax rates of the city or town.

119 (2) The interests and welfare of the public.

120 (3) The hazards of employment, physical, educational and mental
121 qualifications, job training and skills involved.

122 (4) A comparison of wages, hours and conditions of employment
123 of the employees involved in the arbitration proceedings with the
124 wages, hours and conditions of employment of other employees per-
125 forming similar services and with other employees generally in
126 public and private employment in comparable communities.

127 (5) The decisions and recommendations of the fact-finder, if any.

128 (6) The average consumer prices for goods and services, com-
129 monly known as the cost of living.

130 (7) The overall compensation presently received by the
131 employees, including direct wages and fringe benefits.

132 (8) Changes in any of the foregoing circumstances during the pen-
133 dency of the arbitration proceedings.

134 (9) Such other factors, not confined to the foregoing, which are
135 normally or traditionally taken into consideration in the determina-
136 tion of wages, hours and conditions of employment through volun-
137 tary collective bargaining, mediation, fact-finding, arbitration or
138 otherwise between parties, in the public service or in private
139 employment.

140 (10) The stipulation of the parties.

141 Any determination or decision of the arbitration panel or single
142 arbitrator if supported by material and substantive evidence on the
143 whole record shall be binding upon the parties and may be enforced
144 at the instance of either party, the single arbitrator or the arbitration
145 panel in the superior court in equity, provided however, that the
146 scope of arbitration in police matters shall be limited to wages,
147 hours, and conditions of employment and shall not include the
148 following matters of inherent managerial policy: the right to appoint,
149 promote, assign, and transfer employees; and provided, further, that
150 the scope of arbitration in firefighter matters shall not include the
151 right to appoint and promote employees. Assignments shall not be
152 within the scope; provided, however, that the subject matters of ini-
153 tial station assignment upon appointment or promotion shall be
154 within the scope of arbitration. The subject matter of transfer shall
155 not be within the scope of arbitration, provided however, that the
156 subject matters of relationship of seniority to transfers and discipli-
157 nary and punitive transfers shall be within the scope of arbitration.
158 Notwithstanding any other provisions of this chapter to the contrary,
159 no municipal employer shall be required to negotiate over subjects
160 of minimum manning of shift coverage, with an employee organiza-
161 tion representing municipal police officers and firefighters.

162 The commencement of a new municipal finance year prior to the
163 final awards by the arbitration panel shall not be deemed to render a
164 dispute moot, or to otherwise impair the jurisdiction or authority of
165 the arbitration panel or its award. Any award of the arbitration panel
166 may be retroactive to the expiration date of the last contract.

167 If a municipal employer, or an employee organization willfully
168 disobeys a lawful order of enforcement pursuant to this section, or
169 willfully encourages or offers resistance to such order, whether by
170 strike or otherwise, the punishment for each day that such contempt
171 continues may be a fine for each day to be determined at the discre-
172 tion of said court.

173 Each of the parties shall provide compensation for the arbitrator
174 which he has selected pursuant to this section. The remaining costs
175 of arbitration proceedings under this section shall be divided equally
176 between the parties. Compensation for the arbitrators shall be in
177 accordance with a schedule of payment established by the American
178 Arbitration Association.

179 No member of a unit of municipal police officers or firefighters
180 who is employed on a less than full-time basis shall be subject to the
181 provisions of this section.